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18 FORESTETHICS and TODD PAGLIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RESOLUTE FOREST PRODUCTS, INC.,
RESOLUTE FP US, INC., RESOLUTE FP
AUGUSTA, LLC, FIBREK GENERAL
PARTNERSHIP, FIBREK U.S., INC.,
FIBREK INTERNATIONAL INC., AND
RESOLUTE FP CANADA, INC.,

Plaintiffs,

vs.

GREENPEACE INTERNATIONAL (aka
“GREENPEACE STICHTING COUNCIL”),
GREENPEACE, INC., GREENPEACE
FUND, INC., FORESTETHICS, DANIEL
BRINDIS, AMY MOAS, MATTHEW
DAGGETT, ROLF SKAR, TODD PAGLIA,
AND JOHN AND JANE DOES 1-20,

Defendants.

Case Number: 3:17-CV-02824-JST

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Date: August 23, 2017

Time: 2:00 p.m.

Place: Courtroom 9, 19th Floor

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated January 17, 2017 and Civil Local Rule 16-9.

1. Jurisdiction and Service

This action, which was commenced on May 31, 2016, in the United States District Court for the Southern District of Georgia, alleges violations of The Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961-1968, and state statutes and common law. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332, and has supplemental jurisdiction over the pendent state-law claims under 28 U.S.C. § 1367. All defendants were timely served.

1 Upon Defendants' motions to dismiss or transfer forum, on May 16, 2017, the Southern
2 District of Georgia transferred this case to the Northern District of California. (ECF No. 104.)

3 **2. Facts & Allegations**

4 **A. Plaintiffs' Statement of Facts and Allegations**

5 Resolute Forest Products, Inc. and its operating subsidiaries (together, "Plaintiffs" or
6 "Resolute") is engaged in the forest products industry, planting and harvesting trees, milling
7 wood and wood fiber to create a diverse range of products, including market pulp, wood
8 products, newsprint, tissue, and specialty papers as well as power generation in Canada and the
9 United States. Since no later than 2012, Resolute has been the target of a fraudulent and illegal
10 scheme through which a network of environmental activist groups and those working in concert
11 with them disseminated materially false and misleading accusations about Resolute, and
12 engaged in other illegal conduct to devastate Resolute's business and fraudulently induce
13 millions of dollars in donations to Greenpeace. Defendants' scheme included, among other
14 things, ubiquitous misrepresentations about the impact of Resolute's business operations on the
15 boreal forest, its indigenous peoples and caribou populations, and climate change. Defendants
16 also fabricated evidence, issued extortionate threats to Resolute's customers to terminate their
17 business relationships with Resolute or risk become the target of a similar scheme, launched
18 cyber-attacks, and organized crippling tortious boycotts, and engaged in other illegal conduct.
19 As a direct result of their misconduct, the Defendants themselves have taken credit for inflicting
20 not less than C\$100M in damages on Resolute as a result of the conduct set forth above.

21 **B. Defendants' Statement of Facts and Allegations**

22 **1. Greenpeace Defendants' Position**

23 Each of Plaintiffs' claims is, at its root, based on the Greenpeace Defendants' protected
24 speech about issues of public interest. Although Plaintiffs try to reframe such speech as other
25 "acts," their allegations concern speech-based advocacy. All of the 304 challenged statements
26 set forth in the Complaint cite to the public controversy over Plaintiffs' destruction of forest
27 tracts and the sustainability of their logging practices. Plaintiffs allege they were defamed by
28

1 the Greenpeace Defendants' advocacy that, *e.g.*, "logging in some of the last ancient forests in
 2 Canada ...threatens wildlife like the woodland caribou," (Compl. Appendix C 4), "logging is ...
 3 jeopardizing one of Earth's largest carbon sinks," Compl. 42 n.2, and that Plaintiffs engage in
 4 "unsustainable forestry operations" based on their violations of their Forest Stewardship Council
 5 certifications. The alleged defamatory statements, however, are largely either protected opinion,
 6 protected by the fair report privilege, or not plausibly alleged to have been made with actual
 7 malice, and are true statements. They constitute prototypical environmental advocacy on issues
 8 of public significance and, as such, this is a classic Strategic Lawsuit Against Public
 9 Participation ("SLAPP") brought by a large company to squelch criticism by a non-profit
 10 environmental advocate. Resolute brought a defamation suit in Canada against Greenpeace
 11 Canada focusing on speech related to the same controversy that is pending.

12 The Greenpeace Defendants have filed two dispositive motions to dismiss the Plaintiffs'
 13 claims in their entirety including a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (ECF
 14 No. 62), and a special motion to strike the Complaint under the applicable Anti-SLAPP statute
 15 (ECF No. 60), which are both set to be heard by the Court on October 10, 2017. The Greenpeace
 16 Defendants move to dismiss Plaintiffs' Complaint, in its entirety, pursuant to Rule 12(b)(6) on
 17 grounds that (1) Plaintiffs fail to plead a plausible claim for defamation because the allegedly
 18 defamatory statements are time-barred, made by non-defendants, or are fact-based opinions, and
 19 the Complaint fails to plausibly plead actual malice or any other applicable fault, ECF No. 62,
 20 Mot. Dismiss 17-29; (2) Plaintiffs fail to plead a plausible claim under RICO because, *inter alia*,
 21 they fail to plead RICO predicate acts (defamation is not a predicate act) and therefore Plaintiffs
 22 cannot plead mail or wire fraud or extortion, and have failed to plead proximate cause and direct
 23 and concrete injury, *id.* at 29-38; (3) the Complaint fails to plead trademark dilution because
 24 Plaintiffs do not allege registration or ownership of any trademark, that their alleged mark is
 25 distinctive, or any trademark use by Defendants of the complained-of term (as opposed to mere
 26 nominative use), or any factual averments of tarnishment other than conclusory ones, *id.* at 38-
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39; and (4) the Complaint is silent as to any facts in support of Plaintiffs' tortious interference claims and Plaintiffs would be unable to plausibly plead such a claim, *id.* at 39-40.

The Greenpeace Defendants concurrently filed a motion to strike the Complaint pursuant to the Georgia anti-SLAPP statute, O.C.G.A. § 9-11-11.1, or alternatively, California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16. See ECF No. 60, Mot. Strike 3 n.2. This motion remains pending before the Court, which should strike Plaintiffs' Complaint in its entirety pursuant to the applicable anti-SLAPP statute because this suit arises from the Greenpeace Defendants' protected acts of free speech. Plaintiffs cannot establish a probability of prevailing on their claims because, *inter alia*, they cannot meet the daunting actual malice standard where the challenged statements expressly rely on previously published articles in reputable publications and statements in official court records, scientific reports, and government reports. *Id.* at 10-24.

2. Greenpeace Fund, Inc.'s Position

Greenpeace Fund, Inc. joins in what the other Greenpeace defendants have said, and adds that the plaintiffs' allegations against Greenpeace Fund (which is alleged only to have funded the commentary of which plaintiffs complain) are even more deficient than their allegations against the other Greenpeace defendants. Greenpeace Fund filed its own Motion to Dismiss (ECF 61), joined in the Greenpeace defendants' anti-SLAPP Special Motion to Strike, and recently filed its own Supplemental Brief, ECF 145.

3. Stand and Todd Paglia's Position

This is a simple defamation lawsuit that is, at its core, a strategic lawsuit against public participation (a SLAPP action) designed to discourage legitimate criticism of Resolute's forestry practice. Defendants Stand and Todd Paglia (collectively the "Stand Defendants") make a cameo appearance in Resolute's 124-page Complaint. Only 11 of the 267 purported statements expressing criticism of Resolute's forestry practices that are enumerated in the Complaint are claimed to have been made by the Stand Defendants. Ten of those statements are undisputedly barred by the one-year statute of limitations for defamation claims. California Code of Civil

1 Procedure § 340(c). All of the alleged statements attributed by Resolute to the Stand Defendants
 2 consist of advocacy that is protected by the First Amendment and are facially non-defamatory.

3 Resolute couples those 11 alleged defamatory statements with its conclusory allegation
 4 that the Stand Defendants' have a "close all[iance]" and "long history of collaborating on
 5 campaigns" with the Greenpeace Defendants in a meek effort to extend the reach of this case to
 6 claims for violations of federal and state RICO laws, tortious interference with prospective
 7 business relations/contractual relations, conspiracy, and trademark dilution. Resolute's
 8 Complaint is wholly inadequate to do so.

9 Accordingly, the Stand Defendants have filed a Motion to Dismiss pursuant to Federal
 10 Rule of Civil Procedure 12(b)(6) [Docket No. 55] and an anti-SLAPP Motion to Strike [Docket
 11 No. 56]. Both Motions are set to be heard on October 10, 2017 at 2:00 p.m.

12 **3. Legal Issues**

13 The Complaint alleges eleven causes of action, including causes of action for violations
 14 of the federal RICO statute, as well as claims for defamation, tortious interference, civil
 15 conspiracy and trademark dilution. As set forth below in item 4(A), defendants have moved to
 16 strike or dismiss the Complaint in its entirety. Defendants' legal arguments in support of their
 17 motions and Plaintiffs' arguments in opposition are set forth in the briefs identified in item 4(A).

18 **4. Motions**

19 **A. Dispositive Motions**

20 On September 8, 2016, defendants moved to strike the complaint pursuant to the anti-
 21 SLAPP statute, dismiss all the claims pursuant to FRCP 12(b)(6), or transfer forum. (ECF Nos.
 22 55-1, 56-1, 57, 60, 61-1, 62, 127-1.) The motions were fully briefed before the Southern District
 23 of Georgia (ECF Nos. 75, 76, 77, 94, 95, 97, 98.) By order dated May 16, 2017, The Honorable
 24 Judge James Randal Hall, of the Southern District of Georgia, granted Defendants' requests to
 25 transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1406(a). (ECF
 26 No. 104.) The court determined that venue was improper in the Southern District of Georgia
 27 because Plaintiffs failed to establish that a substantial part of the events giving rise to its claims
 28

1 occurred in that district, *id.* at 4-7, and further concluded that venue was proper in the Northern
2 District of California. *Id.* at 8. Defendants' motions to dismiss and strike remain pending.

3 Following the transfer, defendants Greenpeace International ("GPI"), Greenpeace, Inc.
4 ("GP-Inc."), Daniel Brindis, Amy Moas, Matthew Daggett, and Rolf Skar (collectively, the
5 "Greenpeace Defendants") filed a supplemental motion in further support of their motions to
6 strike and dismiss. (ECF No. 127-1.) Plaintiffs filed an opposition to the Greenpeace
7 Defendants' supplemental motion on August 8, 2017. (ECF No. 148.) Pursuant to the
8 Stipulation entered by the Court on July 12, 2017, the Greenpeace Defendants may file a
9 supplemental reply on August 25, 2017. (ECF No. 131.)

10 Defendant Greenpeace Fund filed a supplemental motion in further support of its
11 motions to strike and dismiss on August 7, 2017. (ECF No. 145.) Pursuant to the So-Ordered
12 Stipulation entered by the Court on August 9, 2017, Plaintiffs may file an opposition to
13 Greenpeace Fund's supplemental brief on September 12, 2017 and Greenpeace Fund may file a
14 supplemental reply on September 26, 2017. (ECF No. 149.) Defendants ForestEthics and Paglia
15 (collectively, the "STAND Defendants") also intend to file a supplemental brief. A proposed
16 stipulation consenting to the filing of the brief and the parties' proposed briefing schedule is
17 forthcoming.

18 Oral argument on Defendants' motions to dismiss and strike is scheduled for
19 October 10, 2017 at 2:00 p.m.

20 **B. Discovery-Related Motions**

21 Following the commencement of this action, and prior to filing any dispositive motions,
22 defendants moved to stay discovery pending resolution of their forthcoming motions. (ECF
23 No. 35.) The Southern District of Georgia issued a temporary stay of discovery on August 17,
24 2016 (ECF No. 40), and subsequently granted defendants' motion on September 22, 2016. (ECF
25 No. 66.) Thereafter, Plaintiffs moved to lift the discovery stay. (ECF No. 78.) By order dated
26 January 17, 2017, the Southern District of Georgia denied Plaintiffs' motion. (ECF No. 91.)
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1 Plaintiffs intend to address the propriety of the discovery stay at the August 23, 2017
2 Case Management Conference and seek leave to move to lift the discovery stay in accordance
3 with the Federal and local rules. Defendants intend to oppose any motion to reconsider or lift
4 the stay of discovery.

5 No other motions are anticipated prior to a ruling on defendants' motions to strike and
6 dismiss.

7 **C. Motions by Amici Curiae**

8 The defendants' dispositive motions are supported by two briefs by Amici Curiae,
9 including a brief filed by The Reporters Committee for Freedom of the Press and Eleven Media
10 Companies, ECF No. 63 ("Media Amici"), and a brief filed by nine non-profit organizations that
11 advocate for environmental awareness and protection, ECF No. 64. Plaintiffs oppose the Media
12 Amici's motion for leave to appear as Amici Curiae. ECF No. 65; *see also* ECF No. 68. The
13 Southern District of Georgia did not issue an order on Media Amici's motion for leave.

14 **5. Amendment of Pleadings**

15 No party presently intends to amend its pleadings. To the extent the Court grants, in
16 whole or in part, Defendants' motions to dismiss or strike, plaintiffs may seek leave to re-plead
17 certain claims.

18 **6. Evidence Preservation**

19 The parties hereby certify that they have reviewed the Guidelines Relating to the
20 Discovery of Electronically Stored Information. Immediately following the commencement of
21 this action, Plaintiffs served all defendants with document preservation notices. All parties are
22 taking reasonable and proportionate steps to preserve relevant evidence.

23 **7. Disclosures**

24 The parties agree that all Rule 26(a)(1) disclosures be made 14 days after the Court lifts
25 the stay of discovery entered on September 22, 2016.

8. Discovery

As set forth in item 4(B) above, all discovery has been stayed pursuant to Judge Hall's September 22, 2016 Order.

9. Class Certification Issues

Not Applicable.

10. Related Cases

Not applicable.

11. Relief

Plaintiffs seeks the following relief: (a) compensatory damages in amounts to be determined at trial, together with interest, attorneys' fees, costs, and disbursements; (b) punitive and exemplary damages in amounts to be determined at trial; (c) treble damages, costs of suit, attorneys' fees and costs of litigation under 18 U.S.C. § 1964(c), in amounts to be determined at trial; (d) injunctive relief preventing Defendants from engaging in continued wrongful activity and disgorgement in the form that the Court may determine is just and proper, and requires Defendants to disgorge all monies that they have improperly secured; and (e) prejudgment and post-judgment interest.

Defendants seek dismissal of Plaintiffs' claims in their entirety pursuant to motions to dismiss under Fed. R. Civ. P. 12(b)(6) and motions to strike under the applicable anti-SLAPP statute because this suit arises from Defendants' protected acts of free speech and Plaintiffs cannot establish a probability of prevailing on their claims. Should the Court grant their motions to strike, Defendants seek an award of attorney fees. *See* Cal. Civ. Proc. Code § 425.16(c)(1). Absent an interlocutory appeal of a denial of the Anti-SLAPP motion and continuation of the stay, Defendants' position is that the relief sought by Plaintiffs is impermissible because, among other reasons, the injunctive relief sought is an unconstitutional prior restraint, treble damages are unconstitutional, punitive damages are impermissible because no Defendant acted with actual malice, and the disgorgement of profits is impermissible as a matter of law.

1 **12. Settlement & ADR**

2 No ADR efforts have occurred to date. The parties have elected to pursue an early
3 settlement conference before a magistrate judge. All parties have filed the requisite ADR
4 certifications, with the exception of Defendants Stand and Todd Paglia, who will file their
5 certification by the date of the conference.

6 **13. Consent to Magistrate Judge For All Purposes**

7 The parties do not consent to proceed before a magistrate judge.

8 **14. Other References**

9 Not applicable.

10 **15. Narrowing of Issues**

11 The parties are not aware of any issues that could be narrowed by agreement or by
12 motion, aside from those implicated by Defendants' pending motions to dismiss and strike.

13 **16. Expedited Trial Procedure**

14 The parties do not believe that this case is of a type that can be handled under the
15 Expedited Trial Procedure of General Order 64.

16 **17. Scheduling**

17 **A. Plaintiffs' Proposed Schedule**

18 As set forth above, Plaintiffs propose that discovery proceed during the pendency of
19 Defendants' motions to dismiss and strike in accordance with the Federal and Local rules. The
20 Complaint in this action sets forth 11 causes of action, including claims under the federal and
21 state racketeering statutes, as well as for defamation, tortious interference, trademark dilution
22 and civil conspiracy. In addition, the Complaint incorporates detailed appendices, which set
23 forth alleged misrepresentations that support the RICO, trademark dilution, and common law
24 claims. The allegations cover a multi-year time period, and cite activities that took place in
25 person, online, by telephone and by mail, across a wide range of jurisdictions (both foreign and
26 domestic), by a large number of actors. In light of the complexity of the case, Plaintiffs propose
27 the following schedule for discovery:
28

- Plaintiffs propose that the parties shall serve all written and document discovery and shall complete all depositions concerning fact discovery, including third party discovery, within 280 days following the lifting of the discovery stay in this action.
- Plaintiffs propose to furnish expert witness reports required by Federal Rule 26(a)(2) within 30 days of the close of fact discovery.
- Plaintiffs propose that Defendants furnish expert witness reports required by Federal Rule 26(a)(2) within 30 days of the service of Plaintiffs' expert witness reports.
- Plaintiffs propose to furnish rebuttal expert witness reports within 30 days of the service of Defendants' expert witness reports.
- Plaintiffs propose that all expert discovery, including the depositions of each of the parties' respective expert witnesses, shall be completed within 45 days of the service of rebuttal expert witness reports.
- Plaintiffs propose that all dispositive motions be filed within 60 days following the close of expert discovery.

B. Defendants Proposed Schedule

Defendants believe that it is premature to set a schedule for discovery in this case in light of Defendants' pending dispositive motions, which may eliminate or significantly narrow Plaintiffs' claims, and in light of the discovery stay that has been in place since September 2016. Should the case proceed on all or most of Plaintiffs' claims, given the complexity of the allegations Defendants agree with Plaintiffs that the parties will need at least twice the number of days provided in the local rules to complete discovery, or 280 days. Defendants generally agree with Plaintiffs that fact and expert discovery should be bifurcated. However, should the case proceed on all or most of Plaintiffs' claims, given the complexity of the allegations, Defendants anticipate that the parties will need longer than 30-day periods for furnishing or rebutting any expert reports, as proposed by Plaintiffs. Generally, Defendants anticipate that the parties would need an additional 30 days longer than the time periods proposed by Plaintiffs.

18. Trial

Plaintiffs have requested that this case be tried in front of a jury. Plaintiffs anticipate that trial should last approximately 30 court days.

1 **19. Disclosure of Non-Party Interested Entities or Persons**

2 All parties will file the Certification of Interested Entities or Persons required by Civil
3 Local Rule 3-15 prior to the Case Management Conference.

4 **20. Professional Conduct**

5 Counsel for all parties certify that they have reviewed the Guidelines for Professional
6 Conduct for the Northern District of California.

7 Date: August 14, 2017

Signed: /s/ Lyn R. Agre
Attorney for Plaintiffs

9
10 Date: August 14, 2017

Signed: /s/ Karl Olson
Attorney for Defendant Greenpeace
Fund Inc.

12 Date: August 14, 2017

Signed: /s/ Arthur W. Curley
Attorney for for Defendant STAND,
f/k/a ForestEthics, and Todd Paglia

14
15 Date: August 14, 2017

Signed: /s/ Thomas R. Burke
Attorney for Defendant Greenpeace
International, Greenpeace, Inc. Daniel
Brindis, Amy Moas, Matthew Daggett,
and Rolf Skar

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT JUDGE

Certification of Compliance with N.D. Cal. L.R. 5-1(i)(3)

I, Lyn R. Agre, hereby certify that pursuant to N.D. Cal. Civil L.R. 5-1(i)(3), I have obtained authorization from the above signatories to file the above-referenced document and that they have concurred in the filing's content.

Dated: August 14, 2017

/s/ Lyn R. Agre